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### Cabrera v. State, 135 Nev. Adv. Op. 65 (Dec. 26, 2019)

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CRIMINAL APPEAL: LIFE: DIRECT

**Summary**

The Court determined that the plain language of NRS § 194.010(8)<sup>2</sup> cannot be interpreted to limit the duress defense with respect to crimes that are not punishable with death, regardless of the relationship between those crimes and another crime that is punishable with death.

**Background**

The appellant, Ivonne Cabrera and Eric Morales were in a disagreement after a lent car was not returned. Cabrera and Jose Gonzales drove to Morales' apartment, which he shared with three others: Melissa Marin, James Headrick, and Ashley Wantland. Gonzales shot Headrick and Wantland after Headrick opened the door. Meanwhile, Cabrera knocked on Marin's bedroom door, and Gonzales shot both Morales and Marin. One of the roommates testified that Cabrera stood in the doorway during this time. As a result of the attack, Morales and Headrick died.

Cabrera and Gonzales were charged with two counts each of murder with a deadly weapon and attempted murder with a deadly weapon, conspiracy to commit murder, and burglary while in possession of a deadly weapon. The State sought the death penalty for the murder charges. Gonzales pleaded guilty but Cabrera proceeded to trial. During this process, the State learned Cabrera sought to use the duress defense, arguing that Gonzales forced her participation.

The State filed two motions in limine: one to preclude Cabrera's use of the duress defense for the murder charge and another one to preclude the duress defense for the remaining charges. The district court granted the State's motion in part, concluding that NRS § 194.010(8) precludes the duress defense for the first-degree murder charge and to any of the charges involving an underlying intent to commit murder. On the eve of trial, the State amended the information to include two additional theories of burglary with the intent to commit assault and/or battery. The district court concluded they would give the duress instruction on those two theories but would inform the jury that duress was not a defense on any other charges. Then, Cabrera conveyed she would not argue duress as a defense as to *any* charge. Regardless, the district court gave the instruction that duress was not a defense to any of the original charges.

During closing arguments, Cabrera never argued duress, but the State discussed it, indicating to the jury it was an available defense to burglary and Cabrera chose not to utilize it. Cabrera was found guilty of all charges but they refused to impose a death sentence. Cabrera appealed the judgment of conviction.

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<sup>1</sup> By Trisha Delos Santos.

<sup>2</sup> NEV. REV. STAT. § 194.010(8).

## **Discussion**

Cabrera argued she should have been allowed to use the duress defense for all charges. Here, the Court agreed with the appellant, except for its use against a first-degree murder charge. Duress is an affirmative defense “which provides the defendant a legal excuse for the commission of a criminal act,”<sup>3</sup> but under common law, is not applicable in murder cases.<sup>4</sup> Nevada codified the duress defense at NRS 194.010(8). Accordingly, whether or not Cabrera should have been precluded from using this defense requires statutory interpretation.

NRS § 194.010(8) states “All persons are liable to punishment except. . . [p]ersons, unless the crime is punishable with death, who committed the act or made the omission charged under threats or menaces sufficient to show that they had a reasonable cause to believe, and did believe their lives would be endangered if they refused, or that they would suffer great bodily harm.”<sup>5</sup>

Based on the plain language of the statute, duress is *not* a defense when the crime is punishable with death. Here, the appellant was charged with a crime punishable with death: two counts of first-degree murder.<sup>6</sup> The Court rejects appellant’s argument that duress should be permissible for the murder charge because she simply aided and abetted, she did not pull the trigger. However, the Court acknowledges that under NRS § 195.020, Cabrera was liable as a principal to the crime. Therefore, the court did not err in precluding Cabrera from asserting duress as a defense the first-degree murder charge.

However, Duress is not a defense to crimes not punishable by death because each required proof that Cabrera intended to commit murder. The State relied on *State v. Mannering* to support this proposition, which stated that duress was unavailable for murder or manslaughter.<sup>7</sup> NRS 194.0101(8) differs from Washington’s statute because Nevada does not limit its duress defense by referencing specific crimes, but instead references potential punishments. NRS § 194.010(8) requires courts to look at whether the defendant wants to assert a duress defense for a crime that is punishable by death. Since this Court cannot go beyond the plain language of the statute when its clear on its face, this Court could not adopt the reasoning outlined in *Mannering*. Therefore, the district court erred in precluding Cabrera from asserting duress as a defense against the first-degree murder charge.

## **Conclusion**

Since first-degree murder is punishable by death, the district court did not err in precluding Cabrera from asserting duress as a defense to that charge. However, the remaining charges against Cabrera were not punishable by death; therefore, the district court erred in precluding Cabrera from asserting duress as a defense to the remaining charges. Since this is not a harmless error, this Court reversed the judgment of conviction as to those charges and remanded for further proceedings.

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<sup>3</sup> United States v. LaFleur, 971 F.2d 200, 204 (9th Cir. 1991).

<sup>4</sup> *Id.* at 205.

<sup>5</sup> NEV. REV. STAT. § 194.010(8).

<sup>6</sup> NEV. REV. STAT. § 200.030(4)(a).

<sup>7</sup> 75 P2d 961, 963–94 (Wash. 2003).